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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,546	07/27/2001	John H. Schneider	769-283	8553

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EXAMINER

PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 03/10/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,546

Applicant(s)

SCHNEIDER, JOHN H.

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-8, 10, 11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 10, 11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office action acknowledges the applicant's Amendment C, presented as Paper No. 9. Claims 1-4, 6-8, 10, 11, and 13-15 are pending in the application.

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

2. Claims 1-4, 6, 8, 10, 11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al (US 6,115,892) in view of May (US 5,647,671) and Van Erden (US 6,212,857).

Regarding claim 1, Malin et al discloses a method for producing a tamper evident plastic bag. Malin et al provides a zipper (Col. 2, ll. 35-38); positions said zipper on a web of bag making film with a second flange profile atop a first flange profile (Col. 3, ll. 9-11); secures the second flange profile distal portion to the web of bag making film (Col. 3, ll. 12-14, Figure 4); and transports the web of bag making film in a longitudinally moving direction to a form, fill, and seal (FFS) machine (Col. 3, ll. 18-20, and Figures 3, 4, and 8).

Malin et al also discloses a zipper structure with a first zipper profile (16) and a second zipper profile (18) that include mating interlocking members (Figure 1). In addition, Malin et al discloses first flange (22), second flange (24), and tamper evident feature (32); tamper evident feature (32) is interposed between the proximal and distal

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portions of second flange (24). Malin et al teaches the placement of second flange (24) atop first flange (22) and the subsequent securing to the web (34) on order to prevent the flaring of the second flange (24) upon entry into the FFS machine (see for example, Col. 2, ll. 17-24 and ll. 35-38). The examiner will refer to this as a ramp feature.

Malin et al discloses the claimed invention except for second flange (24) separated from and longer than first flange (22), and positioning a slider over the interlocking members before positioning the zipper on the web.

May discloses a zipper structure (80, Figures 5 and 6) with a second flange (88) I separated from and longer than a first flange (86). May teaches the flange arrangement in order to control the strength of the seal by limiting the number of layers required to penetrate (Col. 8, ll. 52-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the zipper of Malin et al with the second flange separated from and longer than the first flange as taught by May in order to enhance the sealing control. It further would have been obvious to provide the second flange longer than the first flange (and therefore spaced apart in a longitudinally moving direction) in order to maintain the ramp feature necessary to overcome the flange-flaring problem stated by Malin et al.

The method of Malin-May meets all limitations claimed by the applicant except for positioning a slider over the interlocking members before positioning the zipper on the web.

Van Erden discloses positioning a slide on a zipper assembly before positioning the assembly on a web (Figures 1b and 2). It would have been obvious to one of

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ordinary skill in the art at the time the invention was made to provide the zipper assembly of Malin-May with a slider in order to provide a convenient form of opening and closing the bag to the consumer. The examiner notes that sliders are common and conventional in the zippered bag art. It would have further been obvious to one of ordinary skill in the art at the time the invention was made to provide the slide on the zipper before transport to the FFS machine as taught by Van Erden in order to reduce the mechanical components around the FFS machine.

As to claims 2, and 10-11, Malin et al further discloses the sealing of first flange (22) to web (34) and the proximal portion of second flange (24) to web (34) after forming of web (34) into a tube (Col. 3, ll. 30-34). As these seals are meant to remain intact when the bag is opened, they are considered a hard seal.

As to claim 3, May teaches the use of a peel seal with a zipper to indicate to the consumer that the bag has been opened. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply second flange (Malin, 24) to web (Malin, 34) with a peel seal as taught by May in order to indicate to the consumer when the bag has been opened. The examiner notes that a peel seal and a frangible perforation are functional equivalents when used as an indicator for the opening of a bag.

As to claims 4, 6, and 8, Malin et al teaches the use of a perforated line for tamper evident feature (32) on second flange (24) to indicate to the consumer that the bag has been opened. The examiner notes that a perforated line and a scored line (said scored line and said perforated line being frangible) are functional equivalents

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when used as an indicator for the opening of a bag, and it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any commonly used indicator to display to the consumer that the bag has been opened.

Regarding claim 13, the bag (Malin, 50) formed through the process of Malin-May-Van Erden would be the structural equivalent of the bag claimed by the applicant and therefore would have been obvious in view of Malin-May-Van Erden.

As to claim 14, the method of Malin-May-Van Erden as applied to claim 1 above discloses distal portions of first flange (Malin 22) and second flange (Malin 24) spaced apart and the final sealing of proximal and distal portions after processing through the FFS (Col. 3, ll. 30-34).

As to claim 15, the method of Malin-May-Van Erden as applied to claim 1 above discloses the single step attachment of the second flange (Malin, 24) to the web (Malin, 34) for the purpose of transportation through the FFS without flaring (Malin, Col 3, ll. 6-20). The method of Malin-May-Van Erden applies the final sealing of proximal portions and distal portions after processing through the FFS (Malin, Col. 3, ll. 30-34). It would have been obvious to one of ordinary skill in the art at the time the invention was made to secure the second flange to the web while the first flange remains unsecured in order to maintain the single sealing step before processing through the FFS while keeping the ramp feature and the subsequent sealing steps virtually the same.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Malin et al in view of May and Van Erden as applied to claim 6 above, and further in view of Boeckmann et al (US 5,023,122).

The method of Malin-May-Van Erden, as applied to claim 6 above, meets all limitations claimed by the applicant except for a frangible cap layer covering the perforated line.

Boeckmann discloses a bag structure with frangible cap (23) located over perforated line (21). Boeckmann teaches the use of frangible cap (23) to provide a seal over the perforated line until tearing occurs (Abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bag structure of Malin-May-Van Erden with the frangible cap of Boeckmann in order to prevent contamination of the bag contents during storage.

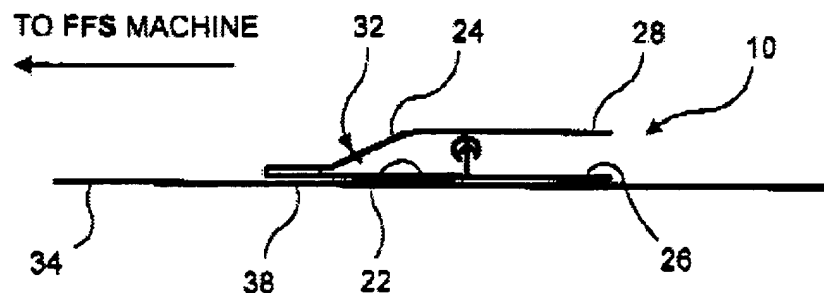
Response to Arguments

4. Applicant's arguments filed December 12, 2003 have been fully considered but they are not persuasive.

5. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, all teachings are found in the references themselves. Malin et al is the base reference, which is modified with the differing sized flanges as taught and suggested by May for the purpose of seal strength control (May, Col. 8, ll. 52-58). Forming the seal through a single layer instead of multiple layers controls seal strength. Since this control would have been the primary motivation for combination, it would have been obvious to one of ordinary skill in the art to separate the flanges of Malin et al as taught by May (see May, Figures 5 and 6). As mentioned above, the second flange would have been longer than the first flange in order to maintain the ramp feature of Malin et al. The examiner notes that the modified flanges would extend in both directions, maintaining the principle of operation disclosed by Malin et al.

**FIG. 4**

6. In response to applicant's argument that May and Van Erden present contradictory teachings for the flange arrangement, the test for obviousness is not

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whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). May is presented for the teaching of seal strength control, and Van Erden is presented for the teaching of the positioning of the slider on a zipper prior to placement on a web.

7. The examiner asserts with the above arguments that a prima facie case of obviousness has been established and all limitations claimed by the applicant are anticipated by the prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GP
Greg Pickett
Examiner
March 8, 2004


Mickey Yu
Supervisory Patent Examiner
Group 3700